

## **REMARKS**

### **I. Objection to the Specification**

The disclosure is objected to because of the following informalities: In line 3 of paragraph [01], the Examiner stated that "2002" should be – 2002, now U.S. Patent No. 6,766,817,--. The Examiner indicated that appropriate correction is required.

The Applicant has therefore amended the specification as indicated herein to overcome this objection. The Applicant therefore submits that this objection has now been traversed and respectfully requests withdrawal of the aforementioned objection.

### **II. Double Patenting Rejection**

In the Office Action dated November 12, 2004, the Examiner stated that a nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

The Examiner indicated that a timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b). The Examiner also noted that Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-20 were therefore rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-35 of U.S. Patent No. 6,766,817. The Examiner indicated that although the conflicting claims are not identical, they are not patentably distinct from each other because they do not support separate patents. The Examiner further indicated that claims 1-20 herein are cross-readable on the embodiments claimed in da Silva '817, and the claims of da Silva '817 are cross-readable on the embodiments claimed herein. As such, the Examiner argued that the claims herein are not patentably distinct from the claims of da Silva '817.

The Applicant is therefore providing with this response, a timely filed terminal disclaimer in compliance with 37 CFR 1.321(c). The Applicant therefore believes that the application is now in condition for allowance.

### III. Conclusion

In view of the foregoing discussion, Applicant has responded to each and every rejection of the Official Action, and respectfully requests that a timely Notice of Allowance be issued. Applicant respectfully submits that the foregoing discussion does not present new issues for consideration and that no new search is necessitated.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact the undersigned representative to conduct an interview in an effort to expedite prosecution in connection with the present application.

February 8, 2005

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kermit Lopez", with a stylized flourish at the end.

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